

ORDINANCE NO. 21-01

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF PATAGONIA, ARIZONA, AMENDING THE CODE OF PATAGONIA, ARIZONA BY ADOPTING A NEW ARTICLE 16 RELATING TO THE REGULATION OF RECREATIONAL MARIJUANA; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; REGULATING MARIJUANA ESTABLISHMENTS AND/OR MARIJUANA TESTING FACILITIES; ESTABLISHING REGULATIONS FOR PERSONAL USE AT AN INDIVIDUAL'S PRIMARY RESIDENCE; AUTHORIZING RETAIL SALES FROM MARIJUANA AND MARIJUANA PRODUCTS; IMPOSING FEES; SETTING FORTH VIOLATIONS; AND PROVIDING FOR ENFORCEMENT AND PENALTIES.

WHEREAS, marijuana contains tetrahydrocannabinol ("THC"), which remains on Schedule I of the Controlled Substances Act pursuant to 21 U.S.C. § 811 et al. and any possession and use is a violation of federal law pursuant to 21 U.S.C. § 841 et. al.;

WHEREAS, the Arizona Medical Marijuana Act, Arizona Revised Statutes Sections § 36-2801 et al., and Title 9, Chapter 17 of the Arizona Administrative Code allow the establishment and operation of nonprofit medical marijuana dispensaries in the Town according to a prescribed statutory and regulatory process;

WHEREAS, the statewide ballot measure I-23-2020, known as "Smart and Safe Arizona Act" and certified as Proposition 207, was approved by Arizona voters on November 3, 2020 and contains provisions authorizing the possession, consumption, purchase, processing, manufacturing or transporting of marijuana by an individual who is at least twenty-one (21) years of age; authorizing possession, transport, cultivation or processing of marijuana plants in a primary residence by adults over 21 years of older; allowing a nonprofit medical marijuana dispensary or other non-dispensary applicant to apply to the Department of Health Services ("Department") to become a licensed marijuana establishment authorized to engage in the retail sale, cultivation and manufacturing of marijuana; and allowing the Department, or another entity designated by the Department, to become a marijuana testing facility to test the potency of marijuana and detect any harmful contaminants;

WHEREAS, the Town of Patagonia ("Town") finds that Proposition 207 authorizes marijuana establishments to use chemical extraction or chemical synthesis, including butane and other flammable gases, to extract marijuana concentrate, which poses a threat to the health, safety and security of the community and increases the responsibilities of law enforcement and other Town of Patagonia departments to respond to violations of state and local laws, including building, electrical and fire codes;

WHEREAS, the Town seeks to protect public health, safety, and welfare by enacting reasonable zoning regulations to limit the locations of marijuana establishments and/or marijuana testing facilities in the Town;

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Patagonia, Arizona, as follows:

Section I: In General.

The Code of Patagonia, Arizona, is hereby amended by adding a new Article 16, Recreational Marijuana to read as follows:

Article 16-1

- Sec. 16-1-1 Purpose**
- Sec. 16-1-2 Definitions**
- Sec. 16-1-3 Marijuana Prohibited on Public Property**
- Sec. 16-1-4 Marijuana Establishments Permitted; Nonresidential**
- Sec. 16-1-5 Marijuana Testing Facility Permitted**
- Sec. 16-1-6 Individual's Primary Residence for Personal Use**
- Sec. 16-1-7 Retail Sales from Marijuana and Marijuana Products**
- Sec. 16-1-8 Fees**
- Sec. 16-1-9 Violations**
- Sec. 16-1-10 Enforcement; Penalties**

Sec. 16-1-1 Purpose.

This article is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal, private use, the Town enacts reasonable regulations and requires compliance with the Town Plan for the retail sale, cultivation and manufacturing of marijuana or marijuana products in a marijuana establishment or marijuana testing facility and the cultivation, processing and manufacturing of marijuana in a primary residence. Nothing in this article is intended to promote or condone the sale, cultivation, manufacture, transport, production, distribution, possession, or use of marijuana or marijuana products in violation of any applicable law.

Sec. 16-1-2 Definitions.

The below words and phrases, wherever used in this article, shall be construed as defined in this section unless, clearly from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. *"Chemical Extraction"* means the process of removing a particular component of a mixture from others present, including removing resinous tetrahydrocannabinol from marijuana.

- B. *"Chemical Synthesis"* means production of a new particular molecule by adding to, subtracting from, or changing the structure of a precursor molecule.
- C. *"Consume," "Consuming,"* and *"Consumption"* mean the act of ingesting, inhaling or otherwise introducing marijuana into the human body.
- D. *"Consumer"* means an individual who is at least twenty-one (21) years of age and who purchases marijuana or marijuana products.
- E. *"Cultivate"* and *"Cultivation"* mean to propagate, breed, grow, prepare and package marijuana.
- F. *"Deliver"* and *"Delivery"* mean the transportation, transfer or provision of marijuana or marijuana products to a consumer at a location other than the designated retail location of a marijuana establishment.
- G. *"Department"* means the State of Arizona Department of Health Services or its successor agency.
- H. *"Dual Licensee"* means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.
- I. *"Enclosed Area"* means a building, greenhouse, or other structure that has:
1. A complete roof enclosure supported by connecting walls that are constructed of solid material extending from the ground to the roof;
 2. Is secure against unauthorized entry;
 3. Has a foundation, slab or equivalent base to which the floor is securely attached; and
 4. Meets performance standards ensuring that cultivation and processing activities cannot be and are not perceptible from the structure in terms of not being visible from public view without using binoculars, aircraft or other optical aids and is equipped with a lock or other security device that prevents access by minors.

- J. *"Extraction"* means the process of extracting or separating resin from marijuana to produce or process any form of marijuana concentrates using water, lipids, gases, solvents, or other chemicals or chemical processes.
- K. *"Manufacture"* and *"Manufacturing"* mean to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
- L. *"Marijuana"*
1. Means all parts of the plant of the genus cannabis, whether growing or not, as well as the seeds from the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds or resin.
 2. Includes cannabis as defined in A.R.S. § 13-3401.
 3. Does not include industrial hemp, the fiber produced from the stalks of the plant of the genus cannabis, oil or cake made from the seeds of the plant, sterilized seeds of the plant that are incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.
- M. *"Marijuana Concentrate"*
1. Means resin extracted from any part of a plant of the genus cannabis and every compound, manufacture, salt, derivative, mixture or preparation of that resin or tetrahydrocannabinol.
 2. Does not include industrial hemp or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or other products.
- N. *"Marijuana Establishment"* means an entity licensed by the Department to operate all of the following:
1. A single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.
 2. A single off-site cultivation location at which the licensee may cultivate marijuana, process marijuana and manufacture marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.
 3. A single off-site location at which the licensee may manufacture marijuana products and package and store marijuana and marijuana products, but from which marijuana

and marijuana products may not be transferred or sold to consumers.

- O. *"Marijuana Products"* means marijuana concentrate and products that are composed of marijuana and other ingredients and that are intended for use or consumption, including edible products, ointments, and tinctures.
- P. *"Marijuana Testing Facility"* means the Department or another entity that is licensed by the Department to analyze the potency of marijuana and test marijuana for harmful contaminants.
- Q. *"Nonprofit Medical Marijuana Dispensary"* means a nonprofit entity as defined in A.R.S. § 36-2801(12).
- R. *"Open Space"* means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.
- S. *"Person"* means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.
- T. *"Process" and "Processing"* means to harvest, dry, cure, trim or separate parts of the marijuana plant.
- U. *"Public Place"* has the same meaning prescribed in the Smoke-Free-Arizona Act, A.R.S. § 36-601.01.
- V. *"Smoke"* means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

Sec. 16-1-3 Marijuana Prohibited on Public Property.

- A. The use, sale, cultivation, manufacture, production or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled or operated by the Town.
- B. It is unlawful for an individual to smoke marijuana in a public place or open space in the Town.

Sec. 16-1-4 Marijuana Establishments Permitted; Nonresidential.

- A. It shall be unlawful for a person to operate a marijuana establishment at any location within the Town without obtaining a use permit from the Town clerk in accordance with Town Code Article 14-2.
- B. If authorized by state law and a valid permit has been obtained from the Town, a marijuana establishment is permitted in Town subject to the following conditions and limitations:
1. To the fullest extent allowable by law, shall be authorized in Town for:
 - a. A dual licensee who operates both a nonprofit medical marijuana dispensary and marijuana establishment.
 - b. Any other entity licensed by the Department to provide marijuana or marijuana products to consumers.
 2. Shall not be located within five hundred (500) feet of a preschool, kindergarten, elementary, secondary or high school. This distance shall be measured from the lot line of the property in which the business is conducted or proposed to be conducted to the property line of the protected use. *Property line*
 3. Shall be located in a permanent building with a storefront on an established foundation adhering to Town building codes and shall not include any temporary, portable or self-powered mobile facilities, or trailer, cargo container or motor vehicle.
 4. Shall not provide drive-thru services or offsite deliveries of marijuana or marijuana products.
 5. Shall not allow a person to consume marijuana or marijuana products on the premises or provide outdoor seating areas.
 6. Shall provide for proper disposal of marijuana remnants or by-products. The remnants or by-products shall not ~~to~~ be placed within the facility's exterior refuse containers, Town trash can, bin or other Town facility, or in any park refuse container unless authorized in writing by the Town.
 7. Shall not emit dust, fumes, vapors or odors into the environment from the facility and shall ensure that

ventilation, air filtration, building and design standards are compatible with adjacent uses and the requirements of adopted building codes of the Town.

8. Shall not sell marijuana or marijuana products except as permitted by state law to consumers.
9. Shall not display or keep marijuana or marijuana products that are visible from outside the premises.
10. Shall comply with applicable county health regulations for food preparation and handling.
11. Shall comply with applicable laws to safely and securely engage in extraction processes.
12. Shall submit a written security plan to the Town that describes the actions taken to deter and prevent unauthorized entrance into limited access areas including use of security equipment, exterior lighting to facilitate surveillance, and electronic monitoring such as video cameras.
13. For a marijuana establishment that engages in cultivation or manufacturing, shall submit a written operations plan to the Town that describes the following:
 - i. Procedures showing that the marijuana cultivation will be conducted in accordance with state and local laws and regulations regarding use and disposal of pesticides and fertilizers.
 - ii. The legal water source, irrigation plan, wastewater systems to be used, and projected water use.
 - iii. The plan for addressing odor and other public nuisances that may derive from the establishment.

Sec. 16-1-5 Marijuana Testing Facility Permitted.

- A. It shall be unlawful for a person to operate a marijuana testing facility at any location within the Town without obtaining a use permit from the Town clerk in accordance with Town Code Article 14-2.
- B. A marijuana testing facility is permitted in the Town subject to the following conditions:

1. Shall ensure that access to the area of the facility where marijuana or marijuana products are being tested or stored for testing is limited to a facility's owners or authorized agents.
2. Shall ensure that transportation of marijuana or marijuana products is in compliance with applicable law.
3. Shall comply with all testing processes, protocols, standards, and criteria adopted by the Department for testing marijuana and marijuana products.
4. Shall maintain records, equipment and instrumentation as required by the Department.
5. Shall submit a written security plan to the Town that specifies the measures that will be taken to deter and prevent unauthorized entrance into limited access areas including the use of security equipment to detect unauthorized intrusion, exterior lighting to facilitate surveillance, and electronic monitoring such as video cameras that provide coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building and has sufficient recording resolution.

**Sec. 16-1-6 INDIVIDUAL'S PRIMARY RESIDENCE FOR
PERSONAL USE**

- A. To the fullest extent allowable by law, marijuana possession, consumption, processing, manufacturing, transportation, and cultivation is permitted in a residential zoning district in the Town and is subject to the following conditions and limitation:
1. It shall be unlawful for any individual who is at least twenty-one (21) years of age to possess, transport, cultivate or process more than six (6) marijuana plants.
 2. It shall be unlawful for two or more individuals who are at least twenty-one (21) years of age to possess, transport, cultivate or process more than twelve (12) marijuana plants at the individuals' primary residence.
 3. Except as provided by A.R.S. § 36-2801 et al. and this Section, it shall be unlawful for an individual to otherwise cultivate marijuana in an area designated as residential under the Town Plan within the Town limits.

4. Individuals shall not process or manufacture marijuana by means of any liquid or gas other than alcohol that has a flashpoint below one hundred (100) degrees Fahrenheit.
5. Kitchen, bathrooms, and primary bedroom(s) shall be used for their intended use and shall not be used primarily for residential marijuana processing, manufacturing, or cultivation.
6. A residence shall not emit dust, fumes, vapors, or odors into the environment and individuals shall ensure that ventilation, air filtration, building and design standards are compatible with adjacent uses and the requirements of adopted building codes of the Town.
7. Cultivation shall be limited to a closet, room, greenhouse, or other enclosed area on the grounds of the residence equipped with a lock or other security device that prevents access by minors.
8. Cultivation shall take place in an area where the marijuana plants are not visible from public view without using binoculars, aircraft, or other optical aids.

Sec. 16-1-7 Retail Sales from Marijuana and Marijuana Products.

To the fullest extent allowable by law, the sale of marijuana and marijuana products is authorized within the Town from a marijuana establishment and is tangible personal property as defined in A.R.S. § 42-5001 and subject to the transaction privilege tax in the retail classification and use tax.

Sec. 16-1-8 Fees.

- A. The fee for the use permit shall be established by [RESOLUTION OF THE TOWN COUNCIL/FEE SCHEDULE].

Sec. 16-1-9 Violations.

- A. It is unlawful and a violation of this article for a person to sell, cultivate, process, manufacture or transport marijuana or marijuana products if the person fails to meet all the requirements in this article or state law, including the Department's rules.
- B. It is a violation of this article for any person to provide false information on any permit application.

- C. Each day any violation of any provision of this article shall continue shall constitute a separate offense.

Sec. 16-1-10 Enforcement; Penalties.

- A. The use permit may be revoked by the Town for violation of any provision of this article, for any violation of the requirements of the permit, or if the Department revokes the license for a marijuana establishment or marijuana testing facility.
- B. Violations of this article are in addition to any other violation enumerated within the Town ordinances or the Town Code and in no way limits the penalties, actions or abatement procedures which may be taken by the Town for any violation of this article, which is also a violation of any other ordinance or Code provision of the Town or federal or state law. Conviction and punishment of judgment and civil sanction against any person under this article shall not relieve such person from the responsibility of correcting prohibited conditions, or removing prohibited structures or improvements, and shall not prevent the enforced correction or removal thereof.
- C. Civil Penalty: Violations of any provision of this article shall be civil code offenses which may be adjudicated and enforced by the Town civil hearing process set forth in Article 5-3 of the Town Code.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Recitals.

The recitals above are fully incorporated in this Ordinance by reference.

Section IV. Emergency.

Because of the urgent need for the implementation of the Town's regulations concerning recreational marijuana, the immediate operation of this Ordinance is necessary for the preservation of the health, safety, and general welfare. An emergency is hereby declared to

exist and this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor and Council as required by law.

Section V. Zoning Considerations.

In accordance with Article II, Sections 1 and 2, Constitution of Arizona, the Town Council has considered the individual property rights and personal liberties of the residents of the Town before adopting this ordinance.

Section VI. Preservation of Rights and Duties.

This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

Section VII. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Common Council of the Town of Patagonia, Arizona, this 27 day of JANUARY, 2021, by the following vote:

AYES: 5-0

NAYES: NONE ABSENT: NONE

EXCUSED: NONE ABSTAINED: NONE

APPROVED this 27 day of JANUARY, 2021.

Andrea Wood
Andrea Wood, Mayor

ATTEST:
Ron Robinson
Ron Robinson, Town Manager/Town Clerk

APPROVED AS TO FORM:

Bobby Yu
Bobby Yu, Town Attorney

I, Ron Robinson, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 21-01 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF PATAGONIA ON THE 27 DAY OF JANUARY, 2021, WAS POSTED IN THREE PLACES ON THE 4 DAY OF FEBRUARY, 2021.

Ron Robinson
Ron Robinson, Town Manager/Town Clerk